

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CN1401
ADALBERTO APARICIO)	EEOC NO.: N/A
)	ALS NO.: 10-0127
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Adalberto Aparicio's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CN1401; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On November 10, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Kronos Products, Incorporated ("Employer") discharged him on October 17, 2008, because of his citizenship status, Legal Resident, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 4, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On February 19, 2010, the Petitioner filed this timely Request.
2. The Petitioner was originally hired by the Employer on July 29, 1988, to work in its Bakery Department as a Machine Operator. In 2005, the Employer promoted the Petitioner to Second Shift Bakery Department Supervisor.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

3. On October 17, 2008, the Employer stated it discharged the Petitioner for allegedly drinking beer in the Employer's parking lot. The Employer stated it had a zero tolerance policy regarding drinking alcohol on its premises. On that same day, the Employer discharged three (3) other employees for allegedly drinking alcohol on its premises. One of those employees was a United States citizen.
4. In his charge, the Petitioner alleged the Employer discharged him because of his citizenship status, which is legalized resident.
5. In his Request, the Petitioner did not offer any argument.
6. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

There is no evidence to substantiate the Petitioner's claim that the Employer discharged him because of his citizenship status. In particular, on the same day, October 17, 2008, the Employer discharged all employees whom the Employer believed had been drinking alcohol on its premises. One of the discharged employees was a United States citizen. As such, because there is no evidence the Employer treated an employee outside of the Petitioner's protected class more favorably under similar circumstances, there is no substantial evidence of discrimination based on the Petitioner's citizenship status.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Kronos Products, Incorporated, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 22nd day of September 2010

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini